

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

COTTONWOOD
ENVIRONMENTAL LAW CENTER,

Plaintiff,

vs.

DAVID BERNHARDT, in his official
capacity as Secretary of the Interior;
STEVE BULLOCK, in his official
capacity as Governor of the State of
Montana; CAM SHOLLY, in his
official capacity as Park
Superintendent, Yellowstone National
Park; LEANNE MARTEN, in her
official capacity as Regional Forester,
U.S. Forest Service; NATIONAL
PARK SERVICE; U.S. FOREST
SERVICE; USDA-ANIMAL &
PLANT HEALTH INSPECTION
SERVICE,

Defendants.

No. CV 18-12-BU-SEH

ORDER

On June 12, 2020, Plaintiff moved for Leave to Conduct Additional Limited Jurisdictional Discovery and to Stay Governor Bullock's Motion to Dismiss.¹

¹ Doc. 146.

Three photographs were attached as an exhibit to the motion.² Bullock opposed the motion and filed a brief in response on June 17, 2020.³ Plaintiff replied on June 18, 2020.⁴ The Federal Defendants filed a brief in response on June 25, 2020.⁵

Plaintiff argues that “discovery on the issue of whether Defendants jointly hazed Yellowstone bison on federal land in May 2020 . . . is necessary to further answer the question of whether state and federal management of Yellowstone bison is ‘sufficiently interrelated’ to establish [NEPA] jurisdiction over [] Bullock.”⁶

Neither the identity of the individuals depicted in the photographs attached to Plaintiff’s motion nor the identity of the persons or entities for whom they worked will assist the Court in resolution of the core question of whether state and federal management of Yellowstone bison is “sufficiently interrelated to constitute

² See Doc. 147-1.

³ See Doc. 149.

⁴ See Doc. 150.

⁵ See Doc. 152.

⁶ Doc. 146 at 2–3 (citing *Laub v. U.S. Dep’t of Interior*, 342 F.3d 1080, 1092–93 (9th Cir. 2003)).

a single federal action for NEPA purposes,”⁷ or, stated differently, whether the state’s management of Yellowstone bison “is sufficiently independent of federal control” to negate the requirements of NEPA.⁸

The National Park Service (“NPS”) “is the lead agency to implement [bison] hazing within Yellowstone National Park.”⁹ The Montana Department of Livestock (“MDOL”) “is [identified as] the lead agency to implement hazing outside of Yellowstone National Park in Montana with assistance from [Montana Fish, Wildlife, and Parks].”¹⁰ “The NPS and MDOL may request assistance with hazing from other [Interagency Bison Management Plan] members.”¹¹

The photographs attached as an exhibit to Plaintiff’s motion are asserted to be of sites within the Gallatin National Forest outside of Yellowstone National Park.¹² Hazing of bison within Yellowstone National Park is not claimed to be depicted in any of the exhibit photographs.¹³

⁷ *Laub*, 342 F.3d at 1092 (quoting *Fund for Animals, Inc. v. Lujan*, 962 F.2d 1391, 1397 (9th Cir. 1992)).

⁸ *Laub*, 342 F.3d at 1083.

⁹ Doc. 121-4 at 11.

¹⁰ Doc. 121-4 at 11.

¹¹ Doc. 121-4 at 11.

¹² *See* Doc. 147-1 at 2.

¹³ *See* Doc. 147-1 at 2.

ORDERED:

1. The issues presented for resolution by Bullock's motion to dismiss do not support or justify Plaintiff's Motion for Leave to Conduct Additional Limited Jurisdictional Discovery and to Stay Governor Bullock's Motion to Dismiss.¹⁴

2. The motion¹⁵ is DENIED.

DATED this ~~29~~th day of June, 2020.


SAM E. HADDON

United States District Judge

¹⁴ Doc. 146.

¹⁵ See Doc. 146.